

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-221457 **DATE:** January 7, 1986
MATTER OF: H&H Sanders Construction Company

DIGEST:

Protest against agency's rejection of bid because it was found unreasonable as to price and against the agency's readvertisement of requirement is untimely since protest was filed with GAO more than 10 working days after protester learned of agency's actions.

H&H Sanders Construction Company (Sanders) protests the award of a contract to any other firm under solicitation No. R9-5-86-01, issued by the Forest Service for road construction in the state of Missouri. This is a readvertisement of a requirement originally solicited under solicitation No. R9-5-85-50.

We dismiss this protest as untimely.

Sanders argues that the Forest Service improperly found its bid price unreasonable and should not have rejected its bid submitted in response to the original solicitation. It asserts that its bid accurately reflected its costs and that the government estimate was too low. Sanders also argues that in determining its price unreasonable, the agency improperly compared its bid to a nonresponsive bid which was the only other bid submitted under the solicitation. Sanders further contends that all firms had an equal opportunity to bid under the first solicitation and the unfair exposure of its bid price under the initial solicitation gave other competitors an advantage on the resolicitation.

The Forest Service has advised us of the following. Bid opening under solicitation No. R9-5-85-50 was on September 3, 1985, and two bids were received. The low bid was rejected as nonresponsive for failure to furnish the required bond and the other bid, submitted by Sanders, was determined to be excessive as to price when compared with the government estimate. The Forest Service sent Sanders

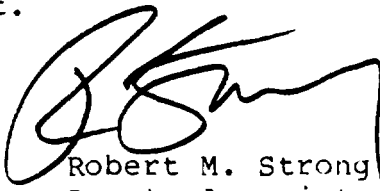
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notice of the rejection of its bid on September 4, 1985. The requirement was readvertised under solicitation No. R9-5-86-01, issued on October 10, 1985. Bids were opened on November 12, 1985. Sanders submitted a bid in response to the readvertisement, but was not the low, responsive bidder. Sanders' protest to our Office was received on December 17, 1985. Sanders essentially protests the rejection of its bid under the original solicitation, cancellation of that solicitation and the resolicitation of the requirement.

Our Bid Protest Regulations require that bid protests be filed within 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1985). Sanders was advised by letter of September 4, 1985, that its bid had been rejected because the agency determined its price was unreasonable. Allowing a reasonable time for delivery of the Forest Service letter, Sanders' protest filed on December 17, more than 10 working days after Sanders receipt of the Forest Service letter, is untimely. Since the protest was not filed in a timely manner, it will not be considered. See Global Crane Institute, B-217306, Jan. 23, 1985, 85-1 C.P.D. ¶ 92.

Although it is unclear whether Sanders was advised of the cancellation of the original solicitation and the resolicitation in the September 4 letter, Sanders' protest against the cancellation and resolicitation is also untimely. The resolicitation was issued on October 10, 1985, bid opening occurred on November 12, 1985, and Sanders submitted a bid under the resolicitation. Thus, Sanders knew when it received the new solicitation that the original solicitation had been canceled and did not protest the cancellation and resolicitation until December 17, 1985, more than 10 working days after it knew or should have known its basis of protest. 4 C.F.R. § 21.2(a)(2).

We dismiss the protest.


Robert M. Strong
Deputy Associate
General Counsel